



## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

**APPROVED**

Tuesday, October 27, 2020

The County Council for Montgomery County, Maryland convened via video conference at 9:33 A.M. on Tuesday, October 27, 2020.

### PRESENT

Councilmember Sidney Katz, President  
Councilmember Gabe Albornoz  
Councilmember Evan Glass  
Councilmember Nancy Navarro

Councilmember Tom Hucker, Vice President  
Councilmember Andrew Friedson  
Councilmember Will Jawando  
Councilmember Craig Rice  
Councilmember Hans Riemer

The President in the Chair.

### PRESENTATIONS

- A. Proclamation was presented by Mr. Glass recognizing Victim Services Advisory Board.
- B. Proclamation was presented by Mr. Katz recognizing White Cane Awareness Day.
- C. Proclamation was presented by Ms. Navarro recognizing Breast Cancer Awareness Month.

### GENERAL BUSINESS

- A. **Announcements** - Agenda and Calendar Changes

Ms. Singleton, Clerk of the Council, announced an addendum to the agenda, adding that the deadline to apply to for a position on the County's 11-member Commission on Redistricting has been extended to Monday, November 9, 2020; noting that the County Council is the sponsor of the special appropriation to the County Government's FY21 Operating Budget, for the Children's Opportunity Fund Non-departmental Account (NDA) - \$1,800,000 for COVID-19 Educational Enrichment and Equity

Hubs and Amendment to FY21 Operating Budget Resolution 19-472 Section G, Designation of Entities for Non-Competitive Contract Award Status: Greater Washington Community Foundation; correcting and making a time change for the Briefing on Inspector General Report - County SharePoint Platform Exposes Sensitive Information of Vulnerable Populations, OIG Publication #21-003; and adding a Legislative Day for consideration of the County Executive's veto of **Bill 29-20**, Taxation - Payment of Lieu of Taxes - WMATA Property - Established.

(1) **B. Acknowledgement - Receipt of Petitions**

There were no petitions received.

C. **Action** - Approval of Minutes

Approved the minutes of July 21, 28, 29, and August 24, 2020, without objection.

(3) **CONSENT CALENDAR**

Approved the following consent calendar items listed below.  
Mr. Rice made the motion, which carried without objection.

- A. **Introduced** a supplemental appropriation to Montgomery College's FY21 Current Fund Budget - \$4,497,874 for CARES Act Higher Education Emergency Relief Fund. A public hearing and action are scheduled for November 10, 2020, at 1:30 P.M.
- B. **Introduced** a special appropriation to the County Government's FY21 Operating Budget, Children's Opportunity Fund Non-Departmental Account (NDA) - \$1,800,000 for COVID-19 Educational Enrichment and Equity Hubs and Amendment to FY21 Operating Budget Resolution 19-472 Section G, FY21 Designation of Entities for Non-Competitive Contract Award Status: Greater Washington Community Foundation. A public hearing and action is scheduled for November 10, 2020, at 1:30 P.M.
- C. **Introduced** a special appropriation to the County Government's FY21 Operating Budget, Office of the County Executive - \$5,050,000 for Support for COVID-19 Response - Tourism Stabilization Grant Program and Amendment to FY21 Operating Budget Resolution 19-472, Section G, Designation of Entities for Non-Competitive Contract Award Status: Conference and Visitors Bureau. A public hearing and action is scheduled for November 10, 2020, at 1:30 P.M.
- D. **Introduced** a special appropriation to the County Government's FY21 Operating Budget, Arts and Humanities Council of Montgomery County (AHCMC) NDA - \$334,500 for Arts COVID-19 Relief Fund. A public hearing and action are scheduled for November 10, 2020, at 1:30 P.M.

- E. **Introduced** a resolution to endorse a Maryland Economic Development Assistance Authority and Fund (MEDAAF) loan: Supernus Pharmaceuticals, Inc.
- F. Adopted **Resolution 19-635**, approving a Functional Transfer of \$204,591 for Montgomery College's FY20 Operating Budget.
- H. Adopted **Resolution 19-636**, confirming the County Executive's appointment to the Commission on Juvenile Justice: Patti Lyman.
- I. Adopted **Resolution 19-637**, confirming the County Executive's appointments to the Early Childhood Coordinating Council: Louise Tolin, Amy Cropp.
- J. Adopted **Resolution 19-638**, confirming the County Executive's appointments to the East County Citizens Advisory Board: Fisseha Adugna, Christopher Bolton, Larry Edmonds, Dawn Hill, Susan Price, Lucille Smith, Sebastian Smoot.
- K. Adopted **Resolution 19-639**, confirming the County Executive's appointments to the Library Board: William Duval, Timothy Lighter, Grace Manubay, Deanna Marcum, Sonja Roberts, Bonita Slade, Robyn Watts.

(2.5) **ACTION - [FY22 Annual WSSC Water Spending Control Limits \(SCL\)](#)**

Mr. Hucker, Chair of the Transportation and Environment (T&E) Committee, said each fall, the Montgomery County Council and Prince George's County Council consider spending control limits for WSSC Water, noting that WSSC Water requested a 6.6% rate increase. The T&E Committee supported a 5.9% rate increase scenario, which the Prince George's County Council has also preliminarily supported.

Adopted **Resolution 19-640**, approving the FY22 Annual WSSC Water SCL. Mr. Hucker made the motion, which carried without objection.

(3) **COUNCIL SITTING AS BOARD OF HEALTH**

A. **Update - [Novel Coronavirus \(COVID-19\) and County Public Health Planning](#)**

Participating in the discussion were Dr. Gayles, County Health Officer and Chief of Public Health Services, Department of Health and Human Services (DHHS); and Dr. Stoddard, Director, Office of Emergency Management and Homeland Security (OEMHS).

Dr. Gayles reported that there has been an increase in the number of cases nationally as well as for Montgomery County, which has a test positivity rate

of 2.9%. He said large family gatherings, religious services, indoor and outdoor dining, and working outside the home are why the rate of transmission has increased, and indicated that future capacity restrictions, rather than closures, may be considered. They are working on plans to address any increase in the rate of hospitalizations. Dr. Gayles noted a shift in age demographics, with people over age 40, 50-59, and 60-69 showing increases in positivity, cautioning that the older population is more likely to be hospitalized. The County tested 6,000 people last week and noted an increase in cases in the Rockville area; they are working to identify clusters. Conversations with Montgomery County Public Schools (MCPS) are ongoing regarding the opening of schools. Regarding a vaccine, Dr. Gayles estimated one would be available in early to mid-winter, and they are working on a dissemination strategy based on prioritization. It is likely the State would supply the County with the vaccines for distribution. Guidance for Halloween activities has been provided, and Dr. Stoddard cautioned that Thanksgiving gatherings have risks.

Ms. Navarro commented on the wait times for calls to 311 and asked what is being done to facilitate communication, and how feedback from the community hubs is being incorporated. Dr. Stoddard indicated wait times to 311 have been approximately 18 minutes, noting that staffing is an issue but that the complexity of calls is also a factor, as 20% of calls are driving wait times. Additional 311 staff was added, but the expected return was not realized. Ms. Navarro requested a Government Operations and Fiscal Policy (GO) Committee meeting be scheduled to discuss 311 operations.

Mr. Albornoz requested clarification on what was appropriate quarantine protocol, noting that Vice President Pence was out campaigning. Dr. Gayles stated that if a test is positive, people should isolate from other individuals for a minimum of 10 days and listen to guidance provided by the disease control team. If you are a high-risk contact, a quarantine period of 14 days is expected. He cautioned that a negative test does not rule out exposure to the virus. He suggested people get tested before a gathering and quarantine until the results are received.

Mr. Riemer requested an update on the 10 P.M. to midnight opening of bars and restaurants. Dr. Gayles said other provisions, such as capacity limits or other restrictions on public gatherings may be considered to prevent increases in the transmission rate. Regarding contact tracing, initial interviews are being done within 24 hours, and investments were made in tracing staff.

Responding to Mr. Friedson, Dr. Gayles said a separate action is needed to walk back provisions. Mr. Friedson requested Councilmembers be made aware of the communication plan.

Dr. Stoddard noted that early voting records were set with more than 24,000 ballots cast, and that they would look at sites with long wait times. He also

noted that they had reviewed 22 reopening plans submitted by private schools of the 30 plans provided to date. They are developing plans to address a surge in cases if the need arises.

**B. Update - [Coronavirus Relief Fund \(CRF\)](#)**

Participating in the discussion were Mr. Madaleno, Chief Administrative Officer; Mr. Fletcher, Assistant Chief Administrative Officer; Dr. Crowel, Director, and Ms. Harris, Chief, Services to End and Prevent Homelessness, DHHS; Dr. Stoddard; Mr. Watters and Mr. Gottesman, Office of Management and Budget (OMB); Mr. Nigam, Director, Department of Housing and Community Affairs (DHCA).

Mr. Madaleno stated that a Coronavirus Aid, Relief, and Economic Security (CARES) Act reimbursement request for over \$31 million was sent out on October 24, and that the Council would be kept informed of when additional reimbursement requests would be submitted. The reimbursement request included \$2 million for cleaning supplies and \$1.1 million for contractor labor for cleaning. The County stockpiled personal protective equipment (PPE) over the summer in anticipation of a fall surge in cases. Of the \$134 million in special appropriations approved by the Council, almost 60% has been spent or encumbered. The Council may be asked to reallocate some unspent funds toward other items.

Received an update on the Eviction Prevention and Relief program, noted that 5,400 applications were received as of October 26, 94% were from people of color, and 50% came from high-need neighborhoods. A total of 2,200 applicants will receive conditional award letters next week, 500 checks have been issued, and 150 households were served through existing housing stabilization programs. Ms. Harris stated the best way to apply is online, and applications can be translated using Google translate. She indicated there has been difficulty in reaching some tenants because calls from non-County phone numbers, due to employees working from home, have not been answered, and some landlords have not been willing partners in the program. The program denial rate is approximately 25 to 35% of all applications, of which 13% are denied because the tenant is not in rent arrears, 3% are not County residents, 3% are not suffering a COVID-related job loss, and 8% did not meet the rent burden threshold of having to pay more than 50% of income in rent. Ms. Harris said they are looking to reduce that threshold to 40% of income and indicated that if there are enough eligible applicants by November 30, they will be able to commit to payment by March 1 and spend the full allocation of \$20 million.

Ms. Navarro commented that Google translate does not provide accurate translations, and expressed concern that phone calls from County employees using non-County numbers were going unanswered. She requested staff use

available technology to show calls as coming from County telephone numbers, explore outsourcing services and using County general funds to provide additional rental assistance; make sure County Public Information Officers, Regional Services Center Directors, and others are involved to make sure special appropriations are fully utilized; and that a framework or template of contacts be established and activated every time a special appropriation is approved.

Councilmembers commented on the great amount of need in the community and the need for increased and targeted outreach. Mr. Nigam indicated DHCA is reaching out to tenants, property managers, and landlords to provide information and encourage participation. Mr. Watters stated OMB is working with DHHS to identify other potential costs related to homelessness that could be eligible for CRF reimbursement, such as shelter modifications. An updated spreadsheet concerning the \$80 million allocated as part of the CARES Act would be provided to the Council on Friday.

Mr. Friedson questioned whether the remaining balance of the initial appropriation would cover existing expenditures, and requested staff provide documentation of all procurements sent to the Council. He asked if there was a plan to fund differential pay after December 31, 2020, and when the Council would receive a formal written response to the Council President's letter dated October 19, 2020.

Mr. Rice expressed frustration at the failure of the Executive Branch to utilize any of the \$3 million special appropriation originally approved on July 21 for assistance to community clinics, medical and dental practices, and asked for the status of community outreach in this area. He asked if there were any loopholes to the eviction moratorium, noting Mr. Nigam's response that there may be pre-COVID eviction cases currently in the court system. Mr. Rice said more outreach is needed to follow-up on these cases.

Mr. Jawando received information from Ms. Harris that some evictions are still occurring, and commented that he is drafting a bill regarding the licensing of landlords. He stressed the need for more outreach concerning the availability of rental assistance, and questioned whether tenants are being charged late fees, expressing the view that it should not be allowed. Ms. Harris agreed to provide more information concerning late fees. Regarding future steps for food distribution, Dr. Stoddard said they are developing a County-funded food distribution budget for after December 30, 2020, when CARES Act funding would end unless extended.

The meeting recessed at 12:55 P.M. and reconvened at 1:50 P.M.

**(3) COUNCIL SITTING AS BOARD OF HEALTH**

**B. Update - [Coronavirus Relief Fund](#) (continued from morning)**

Received an update from Mr. Fletcher on the status of the business relief program, Reopening Montgomery, noting that 4,000 applications were

received, 2,500 were selected and that 1,100 of those businesses chosen provided the required documentation. A total of \$2.2 million has been approved to date. Outreach for the Tourism Stabilization Program is ongoing and will be ramped up for the Unemployment Outreach initiation program once it is known whether unemployment benefits would be extended at the State level. They are working on the administration of the assistance to community clinics, medical and dental practices, which will be led by the Primary Care Coalition. Efforts by the Montgomery County Economic Development Corporation (MCEDC) are ongoing concerning the restaurant relief package.

Mr. Friedson requested information be provided on whether every business that submitted an application would be selected over the course of the two lotteries, outreach activities, and if there is adequate funding to provide the requested reimbursements. Mr. Madaleno commented that the Governor will provide specific guidelines on dispersal of funds and agreed to inform the Council of a designated contact person within the Executive Branch. Mr. Friedson suggested feedback be solicited from the Economic Recovery Working Group.

Responding to a question from Mr. Glass, Mr. Fletcher noted that 58% of residents selected for the rental assistance program have not responded.

(4) **BRIEFING - [Inspector General Report - County SharePoint Platform Exposes Sensitive Information of Vulnerable Populations, OIG Publication #21-003](#)**

This item was postponed until November 17, 2020.

(5) **WORKSESSIONS:**

- A. [2020-2024 Subdivision Staging Policy \(SSP\)](#)
- B. [Bill 37-20, Subdivision - Preliminary Plan - Adequate Public Facilities \(APF\) - Amendments](#)
- C. [Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments](#)
- D. [Expedited Bill 39-20, Taxation - Recordation Tax - Amendments](#)

Mr. Katz announced that straw votes would be taken today.

Participating in the discussion were Mr. Anderson, Chair, Montgomery County Planning Board; Ms. Wright, Director, and Mr. Sartori, Planning Department, Maryland-National Capital Park and Planning Commission (MNCPPC);

Ms. McGuire, MCPS; Ms. Beck, OMB; Ms. Dunn, Senior Legislative Analyst; and Mr. Orlin, Senior Analyst.

Mr. Riemer, Chair of the Planning, Housing and Economic Development (PHED) Committee, stated that he hoped the Council would be able to get through the moratorium issue today and to start reviewing the Utilization Premium Payment (UPP) recommendation. He noted that Impact Taxes would not be taken up today to allow Councilmembers time to review additional information that was received.

Ms. Dunn began the review on page 7 of the staff report with *Section C - Annual School Test Guidelines and Utilization Report*. Supported, without objection, the Committee recommendations to concur with the Planning Board to require the Board to adopt a set of Annual School Test Guidelines by January 1, 2021; to concur with the Planning Board that a Utilization Report accompany the Annual School Test results; and to base the requirement on the GO Committee decision regarding school impact tax credits for non-capacity improvements.

Ms. Dunn reviewed *Section D - Annual School Test Evaluation Levels*. Supported, without objection, the Committee recommendation to concur with the Planning Board's recommendation for an individual school level test only.

Ms. Dunn reviewed *Section E - Time Horizon for Annual School Test Projections*. Supported, without objection, the Committee recommendation to concur with Mr. Riemer's suggested compromise of a 4-year time horizon for evaluating projected school utilization. Ms. Dunn noted that at the next worksession on October 30, the Council could change the 4-year time horizon to 5 or 3 years.

Ms. Dunn and Dr. Orlin noted that *Section F - Annual School Test Applicability* was a very technical and complicated issue. Mr. Jawando spoke to his opposing position during the Committee's review. Supported, by a vote of 8-1, the Committee recommendation to concur with the Planning Board's recommendation that the Annual School Test establish each school service area's adequacy status for the entire fiscal year. Mr. Jawando was opposed.

Ms. Dunn reviewed *Section G - SSP Recommendations not included in the Draft SSP resolution* for which the Planning Board seeks concurrence: *Item 1 - Retest school adequacy for any applicant seeking an extension of APF Validity*. Supported, without objection, the Committee recommendation to concur with the Planning Board's recommendation for a retest; however, the Committee recommended limiting the retest requirement to projects with certain characteristics. The Committee asked the Planning Department to provide a suggested limit. In response, Planning recommends that for any project where remaining unbuilt units would generate more than 10 students at any school serving the development, a new APF determination must be made.

*Section G continued: Item 2. Expand the role of the MCPS representative to the Development Review Committee (DRC).* Supported, without objection, the Committee recommendation to concur with the Planning Board's recommendation to expand the role of the MCPS representative on the DRC.

Mr. Riemer reviewed *Section H - School Adequacy Standards and Residential Development Moratorium*, and noted that the Committee recommendation is the most consequential recommendation of the Subdivision Staging Policy. The majority Committee recommendation opposes the use of moratoria, citing its significant negative impacts to the County in exchange for a narrow impact on school enrollment growth. Mr. Jawando spoke to his position of the dissenting vote on the Committee recommendation and of his support of raising the Countywide moratoria threshold.

Mr. Jawando made a motion to raise the Countywide moratoria threshold from the current threshold of 120 percent to 135 percent. After discussion of the motion by Councilmembers, Mr. Anderson and Planning Department staff, Mr. Jawando withdrew his motion, citing lack of support.

Supported, without objection, the Committee recommendation in support of elimination of moratoria Countywide.

Ms. Dunn noted that an addendum had been provided for *Section I - Utilization Premium Payment*, correcting the multifamily low-rise and high-rise impact tax and UPP rates for the Greenfield School Impact Area found in Tables 12, 13, 14, 15, and 16 on pages 25 and 26.

After review of the recommendations for *Section I*, Mr. Jawando made a motion in support of UPP rates at the agreed-upon thresholds of 105, 120 and 135 percent with UPP rates of 50, 100 and 150 percent respectively, which was revised from the chart at the top of page 24 containing his recommendations made in Committee.

After discussion with Councilmembers and staff from MCPS, Mr. Jawando withdrew his motion citing the need for more economic data.

Supported, without objection, the Utilization Thresholds of 105, 120 and 135 percent with accompanying seat capacity. The issue of UPP rates will be taken up after Councilmembers have been provided with additional economic data and have had a chance to review it.

(6) **DISTRICT COUNCIL SESSION**

A. **Introduction - [Zoning Text Amendment \(ZTA\) 20-04, Farming Defined - Accessory Mulching and Composting](#)**

Introduced draft #2 of the subject ZTA, sponsored by Councilmember Glass. Clarified additional lead sponsors are Councilmembers Friedson, Navarro and Rice, and co-sponsors are Councilmembers Riemer, Albornoz, Jawando and

Hucker. Councilmember Katz requested to be added as a co-sponsor. A public hearing is scheduled for December 1, 2020, at 1:30 P.M.

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND  
IN LEGISLATIVE SESSION - Day #31**

(7) **Miscellaneous Business**

A. [Consideration of County Executive's Veto of \*\*Bill 29-20\*\*, Taxation - Payment in Lieu of Taxes - WMATA Property - Established](#)

Mr. Drummer, Senior Legislative Analyst, provided a summary of considerations for overriding the County Executive's veto of **Bill 29-20**.

Several Councilmembers noted that the legislation was not perfect but that the bill would make a significant impact on the viability of building new and affordable housing on Metro station property. Mr. Rice indicated that as has been done with previous administrations, it would have been helpful if the County Executive had indicated in advance why he planned to veto the legislation.

Mr. Hucker expressed concerns about the bill including uncertainties about the budget outlook, that better outcomes for projects could be achieved with a more precise approach, and the off-balance benefit to WMATA.

Mr. Jawando expressed concerns about the bill, including that it is not the best use of taxpayers' money, does not support workers with a prevailing wage requirement, significant tax revenue would be lost, and that not enough housing affordability is required for projects.

Supported, by a vote of 7 to 2, Mr. Riemer's motion to override the County Executive's veto. The subject bill was overridden by a roll call vote:

YEAS: Glass, Riemer, Navarro, Albornoz, Rice, Friedson, Katz

NAYS: Jawando, Hucker.

The meeting adjourned at 5:43 P.M.

This is a correct copy of Council action.

*Approved/Signed by Clerk of the Council*

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Selena Mendy Singleton, Esq.  
Clerk of the Council